

STATE OF MICHIGAN
COURT OF APPEALS

In re PEREZ, Minors.

DEPARTMENT OF HEALTH AND HUMAN
SERVICES,

Petitioner-Appellee,

v

ALEX PEREZ,

Respondent-Appellant.

UNPUBLISHED
March 16, 2017

No. 334734
Berrien Circuit Court
Family Division
LC No. 2016-000009-NA

Before: RIORDAN, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court order terminating his parental rights to two minor children under MCL 712A.19(b)(3)(g) and (j). We affirm.

At the time of the termination hearing, father had been charged, but not convicted, of a double homicide involving the children's mother and maternal grandfather. In January 2016, on the night of mother and grandfather's murders, police arrived at the scene and issued an Amber Alert because they knew two children lived in the house but could not locate either of them. They also noted that mother's car was missing. The car was eventually located in Georgetown, Colorado, by a deputy with the local sheriff's department. When the deputy approached the car, he saw an adult male, later identified as father, and two children. The inside of the car was covered with trash, old food, diapers, and dirty clothes, and it smelled of urine, feces, and body odor. One child was wearing just a diaper, and the other was wearing pants, but both the pants and diaper were completely soaked in urine. Further, despite the cold weather of Colorado in January, neither child was wearing shoes, a jacket, a hat, or gloves. The deputy proceeded to take father into custody. While doing so, the deputy asked father if he had any weapons in the vehicle, and father stated that there was a hammer in the front seat of the vehicle that he used to "take care of the problem." Subsequently, the deputy asked where the car owner was so he could inform her that the police were impounding her vehicle, and father responded that "her and her father were dead." Father was then incarcerated and the children were placed with the Department of Health and Human Services (DHHS) for the months leading to the termination hearing.

On appeal, father argues that the trial court erred by finding that a statutory ground for termination was established and by finding that termination was in the children's best interests. We disagree. "To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). This Court "review[s] for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence." *Id.* "A trial court's decision is clearly erroneous [i]f although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012) (quotation marks and citations omitted). "Appellate courts are obliged to defer to a trial court's factual findings at termination proceedings if those findings do not constitute clear error." *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009).

The trial court terminated father's parental rights under MCL 712A.19b(3)(g) and (j). Termination under MCL 712A.19b(3)(g) is proper when "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." The record supports the trial court's finding that father failed to provide proper care or custody for the children. When authorities found father with the children in Colorado, the conditions the children were in were deplorable and unsanitary. The children were covered in urine, the car was full of trash, old food, and dirty diapers, and neither child was dressed appropriately for the weather. The conditions in which father was transporting the children supported the trial court's finding that father failed to provide proper care for the children.

Further, father demonstrated an inability to obtain stable employment and housing. Father's most recent employment lasted from April 2015 until sometime in the fall of 2015. In November, father left for California. Father did not subsequently obtain a job and had no prospective employment opportunities or other sources of income at the time of the termination hearing. Further, when asked at the termination hearing if he "currently [had] a place to stay," father answered, "No." Father also had a history of domestic violence in front of the children. On multiple occasions, father faced charges of domestic violence. A report prepared by a therapist with the DHHS indicated that the children had witnessed at least some of these acts of domestic violence and that it had caused them emotional trauma. Further, a forensic interviewer in Colorado who interviewed the children after father was arrested indicated that at least one of the children had seen father have an altercation with mother on the night the Amber Alert was issued. During the interview, the child pointed to her forehead and said "big boo boo," which corresponded with injuries that mother suffered on her head that ultimately led to her death. Father's history of domestic violence supports the trial court's finding that father did not provide proper care or custody for the children.

Lastly, there was no reasonable expectation that father would be able to provide proper care and custody in a reasonable time. Father had a history of being offered services in the past to help him address his problems, such as his anger issues, but father did not follow through with the treatments. Father also had a history of arrests and violating his probation, which indicates a disregard for rules and court orders. The trial court did not clearly err by holding that this history of noncompliance tended to show that father would not benefit from any programs or services that the DHHS offered. We are not left with a firm and definite conviction that the trial court

made a mistake by finding that father would not be able to provide proper care and custody within a reasonable time, and the trial court did not err by terminating father's parental rights under MCL 712A.19b(3)(g).

Father argues that the trial court terminated his parental rights solely due to his incarceration in violation of *In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010), in which the Michigan Supreme Court held that "[t]he mere present inability to personally care for one's children as a result of incarceration does not constitute grounds for termination." However, the present case is sufficiently distinguishable from *Mason*. Indeed, the Supreme Court in *Mason*, 486 Mich at 146, stated that the trial court "effectively terminated respondent's parental rights merely because he was incarcerated during the action without considering the children's placement with relatives or properly evaluating whether placement with respondent could be appropriate for the children in the future." Here, the trial court indicated that it considered relative placement, but the DHHS had found that all possible relative placements were unfit. Based on the DHHS's findings, the trial court concluded that relative placement was "not an option" in this case. In addition, there were ample reasons aside from incarceration that supported the trial court's ruling.

Because termination was proper under MCL 712A.19b(3)(g), we need not determine whether termination was justified under subsection (j). See *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App at 40. Appellate courts "review for clear error . . . the court's decision regarding the child's best interests." *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000), superseded by statute on other grounds as recognized in *In re Moss*, 301 Mich App at 83. "[T]he focus at the best interest stage" is on the child, not the parent. *In re Moss*, 301 Mich App at 87. The trial court should weigh all the evidence available to it in determining the child's best interests, *In re Trejo*, 462 Mich at 356, and may consider such factors as

the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home. [*In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted).]

Other considerations include "the children's well-being while in care[] and the possibility of adoption." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014). The trial court may also consider the length of time the child was in foster care or placed with relatives, and the likelihood that "the child could be returned to her parent's home within the foreseeable future, if at all." *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

When finding that it was in the children's best interests to terminate father's parental rights, the trial court noted that the therapist recommended termination based upon the trauma father caused the children. The court further noted that it was unclear whether father had a bond with the children. The court also found that the possibility of adoption was high given the children's age, that the children had been placed in foster care for six months, and that the only

way to ensure the children could have permanency, stability, and finality at this point was by terminating father's parental rights.

The record establishes that the children suffered emotional trauma in father's care. The therapist's report indicated that both children were traumatized as a result of father's altercation with the children's maternal grandfather and were further traumatized by the occurrences in Colorado. The report's recommendation that termination was in the children's best interests was based on this emotional trauma caused by father while the children were in his care. These concerns for the children's emotional well-being while in father's care support the trial court's conclusion that termination was in the children's best interests. *In re White*, 303 Mich App at 714. In addition, while there was some evidence of a bond between father and the children, other evidence showed an insignificant bond. The record also supports the trial court's finding that the possibility of adoption was high. At the time of termination, the children were three years old and five years old. Given their young ages, the children were likely to be adopted. The children had also been progressing satisfactorily during their stay in foster care. Before the termination proceedings began, neither child was toilet trained. However, by the time of the termination proceeding, both children were developmentally appropriate for their ages and had been toilet trained. Based on their progression in foster care and their young ages, the trial court did not clearly err by finding that the children's possibility of adoption was relatively high, which supports its finding that termination was in the children's best interests. *In re White*, 303 Mich App at 714.

Moreover, as the trial court noted, the record shows that the children had been in foster care for almost six months at the time of the termination proceeding. The children's stay in foster care was not likely to end soon due to father's pending criminal trial. Thus, while father remained the children's sole parent, the children's future remained unclear until the conclusion of father's criminal trial, which could last a significant time. Thus, the trial court did not err by finding that termination of father's parental rights ensured the children's need for permanency, stability, and finality were met, supporting the court's conclusion that termination was in the children's best interests. *In re Olive/Metts*, 297 Mich App at 41-42.

Affirmed.

/s/ Michael J. Riordan
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood